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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

- - - - - x
In re: : Chapter 11
:
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
:
Debtors. : Jointly Administered
- - - - - x

**DEBTORS' MOTION FOR AN ORDER UNDER BANKRUPTCY CODE
SECTION 1121(d) EXTENDING EXCLUSIVE PERIODS DURING WHICH
DEBTORS MAY FILE AND SOLICIT ACCEPTANCES OF A PLAN OF
LIQUIDATION**

The debtors and debtors in possession in the
above-captioned jointly administered cases (collectively,

the "Debtors")¹ hereby move (the "Motion"), for entry of an order, pursuant to section 1121(d) of title 11 of the United States Code (the "Bankruptcy Code") extending the exclusive periods during which the Debtors may file and solicit acceptances of a plan of liquidation. In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested herein is Bankruptcy Code section 1121(d).

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), PRAHS, INC. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

BACKGROUND

3. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

A. The Debtors' Operations.

6. As of the Petition Date, Circuit City was the second largest consumer electronics retailer in the United States, operating a nationwide chain of electronics stores that sold, among other things, televisions, home theatre systems, computers, camcorders, furniture, software, imaging and telecommunications products, and other audio and video electronics.

7. The Debtors operated a massive and complex retail network and the Debtors' chapter 11 cases have been correspondingly large and complex. In particular, as of the Petition Date:

- The Debtors operated approximately 712 Superstores and 9 outlet stores throughout the United States and Puerto Rico.
- The Debtors also maintained two websites -- www.circuitcity.com and www.firedog.com -- as well as a phone-order call center -- 1 800 THE CITY.
- The Debtors' workforce was comprised of approximately 39,600 full and part-time employees in their stores, their corporate headquarters and their distribution centers.
- The Debtors maintained an international presence through a wholly-owned Canadian subsidiary, IntertAN Canada Ltd.
- The Debtors had more than \$3 billion in assets and more than \$2 billion in liabilities.
- The Debtors had hundreds of thousands of creditors and other parties in interest, including vendors, customers, landlords, utilities, taxing authorities, independent contractors and others.

8. The Debtors received approval of a general bar date of January 30, 2009 and a governmental claims bar date of May 11, 2009. The Debtors have not

yet set an administrative claims bar date. As of January 31, 2009, parties in interest had submitted approximately 10,270 proofs of claim for claims totaling approximately \$6.6 billion. Of this amount, close to \$500 million alone is attributable to claims arising under section 503(b)(9) of the Bankruptcy Code. Preliminary reconciliation efforts suggest that such claims may amount to over \$215 million. However, the reconciliation process with respect to all categories of claims is in its early stages. The Debtors will be continuing such efforts in the coming weeks and months.

B. The Debtors' Restructuring Efforts.

9. In filing their chapter 11 cases, the Debtors were hopeful that the bankruptcy process would enable them to restructure their businesses and to emerge as a going concern. Thus, after the Petition Date, the Debtors continued their pre-petition efforts to formulate a feasible restructuring or, in the alternative, to sell substantially all of their assets as a going concern. To that end, the Debtors worked to streamline their operations, by, among other things, closing unprofitable stores and rejecting costly

leases and contracts. At the same time, Debtors' advisors actively marketed the Debtors' businesses and operations and compiled a list of potential purchasers and strategic partners for the Debtors' businesses or any portion thereof.

10. The Debtors ultimately determined that a sale of the Debtors' assets represented the Debtors' best option for maximizing the value of the estates for their creditors and parties in interest, and, thus, focused their efforts on maximizing the return from such a sale.

11. On January 9, 2009, the Debtors' unsealed their motion seeking authorization to conduct auctions for a sale or sales of the Debtors' businesses as a going concern or for liquidation, or of miscellaneous of the Debtors' assets (D.I. 1423, the "Sale Motion").

12. On January 12, 2009, the Court entered an order authorizing the Debtors to solicit bids and conduct auctions, as well as other procedural aspects of the Sale Motion (D.I. 1460; the "Sale Procedures Order").

Pursuant to the Sale Procedures Order, the Debtors held auctions on January 13, 14 and 15, 2009.

13. Based on certain indications of interest, the Debtors remained hopeful that they would be able to consummate a sale of the Debtors' businesses as a going concern. Unfortunately, despite the Debtors' intensive efforts, the auction did not yield a feasible going concern bid. Instead, the Debtors, in consultation with the Creditors Committee and the agent under the DIP Facility, determined that the only alternative was to pursue a liquidation of the Debtors' businesses. Accordingly, the Debtors' determined that the highest or otherwise best bid received at the auction was that of a joint venture (collectively, the "Agent"). The Debtors entered into an agency agreement (the "Agency Agreement") with the Agent on January 15, 2009.

14. On January 16, 2009, the Court approved the Debtors' entry into the Agency Agreement (D.I. 1634). On January 17, 2009, the Agent commenced going-out-of-business sales (the "GOB Sales") pursuant to the Agency Agreement at the Debtors' remaining stores. The GOB Sales are continuing as of the date hereof. On January

17, 2009, the Debtors also began parallel efforts to wind-down their operations and sell their remaining assets (collectively, the "Liquidation").

RELIEF REQUESTED

15. By this Motion, the Debtors request entry of an order (i) extending the Plan Period (as defined below) until July 8, 2009, a date that is one hundred and twenty (120) days after the expiration of the current Plan Period, and the Solicitation Period (as defined below) until September 6, 2009, a date that is sixty (60) days after the expiration of the proposed one hundred and twenty (120) day extension of the current Plan Period. If granted, the extension of the Exclusive Periods (as defined below) will be without prejudice to (i) the right of the Debtors to seek further extensions of the Exclusive Periods or (ii) the right of any party in interest to seek to reduce the Exclusive Periods for cause.

BASIS FOR RELIEF

16. Bankruptcy Code section 1121(b) provides for an initial 120-day period after the Petition Date within which the Debtors have the exclusive right to

file a plan or plans of reorganization in their cases (the "Plan Period"). Bankruptcy Code section 1121(c) further provides for an initial 180-day period after the Petition Date within which the Debtors have the exclusive right to solicit and obtain acceptances of a plan filed by the Debtors during the Plan Period (the "Solicitation Period" and, together with the Plan Period, the "Exclusive Periods"). Thus, the Plan Period is set to expire on March 10, 2009, and the Solicitation Period is set to expire on May 9, 2009.

17. At this point, the Debtors are continuing to seek to maximize returns from the Liquidation for their estates and creditors and to reconcile and evaluate the various claims of creditors. Given the Debtors' substantial efforts since the Petition Date and the short time that has elapsed since the Court's approval of the Agency Agreement and the Liquidation, the Debtors believe that they should be granted additional time to undertake these asset liquidation and claims reconciliation efforts and to develop an appropriate plan of liquidation without the distraction of competing plans filed by other parties in interest.

18. The Debtors, along with their advisors, are currently analyzing their alternatives in connection with any plan of liquidation, including evaluating their claims and assets. Furthermore, as previously noted, the Debtors have only recently obtained approval of the Liquidation and have, just within the past few weeks entered into the Agency Agreement. The extension requested in this Motion will provide the Debtors and their advisors the opportunity to analyze the Debtors' post-Liquidation financial circumstances and develop a liquidating plan that maximizes returns to parties in interest. As set forth more fully below, the Debtors believe that the requested extension is reasonable in light of the circumstances.

19. Accordingly, the Debtors request that the Court (a) extend the Exclusive Periods as set forth above and (b) prohibit any party, other than the Debtors, from filing a competing plan and/or soliciting acceptances of any such competing plan during the extended Exclusive Periods.

APPLICABLE AUTHORITY

20. Under Bankruptcy Code section 1121(d), the Court may extend the Exclusive Periods for cause. Specifically, section 1121(d) provides:

[O]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause . . . increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1).

21. Courts have identified several key factors relevant to a determination of whether cause exists under Bankruptcy Code section 1121(d), including the following:

- (a) The size and complexity of a debtor's case;
- (b) The amount of time that has elapsed since the debtor filed its bankruptcy case;
- (c) Whether unresolved contingencies exist that affect the debtor's ability to reorganize;
- (d) The debtor's progress in resolving issues facing its estate; and
- (e) Whether an extension of time will harm the debtor's creditors or other interested parties.

See In re Dow Corning Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); In re Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (E.D.N.Y. 1989); In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); see also In re Adelphia Comm. Corp., 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006).

22. In determining whether to grant a requested extension of exclusivity, courts also consider whether a debtor has had a reasonable opportunity to negotiate an acceptable plan with various interested parties and to prepare adequate financial and non-financial information concerning the ramifications of any proposed plan for disclosure to creditors. See McLean, 87 B.R. at 833-34; In re Texaco, Inc., 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

23. In evaluating whether an extension under Bankruptcy Code section 1121(d) is warranted, courts are given maximum flexibility to review the particular facts and circumstances of each case. See In re Amko Plastics, Inc., 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996) ("[A]pplying the 'flexibility' in dealing with the

question of extension of exclusivity which the cases suggest . . . , we hold that debtor has shown cause for the extension."); In re Pub. Serv. Co., 88 B.R. 521, 534 (Bankr. D.N.H. 1988) ("[T]he legislative intent [is] to promote maximum flexibility."); H.R. Rep. No. 95-595, at 232 (1978) ("[T]he bill allows the flexibility for individual cases that is unavailable today."), reprinted in 1978 U.S.C.C.A.N. 5963, 6191.

24. As set forth herein, the one hundred and twenty (120) day extension of the Exclusive Periods is warranted here because, among other things:

- (a) The Debtors' cases are large and complex, and certain substantial issues remain unresolved, including but not limited to the validity, amount, and priority of claims and the measure of the Debtors' assets;
- (b) The Debtors have made significant, good-faith progress in resolving many of the issues facing the Debtors' estates, including the ultimate disposition of the Debtors' assets through a liquidation of substantially all of the Debtors' assets and the reconciliation of claims; and
- (c) An extension of the Exclusive Periods will give the Debtors a reasonable opportunity to develop, negotiate, and ultimately confirm a consensual plan, without prejudicing any party in interest.

I. THE DEBTORS' CASES ARE LARGE AND COMPLEX

25. The size and complexity of the Debtors' chapter 11 cases constitute cause to extend the Exclusive Periods. See Express One, 194 B.R. at 100 ("The traditional ground for cause is the large size of the debtor and the concomitant difficulty in formulating a plan of reorganization."); see also Bunch v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.), 292 B.R. 639, 644 (B.A.P. 8th Cir. 2003) (affirming extension of exclusivity period to over eighteen months because of "the complexity of the debtor's case"); In re Highland Park Assocs. L.P. I, 130 B.R. 55, 60 (Bankr. N.D. Ill. 1991) (finding that "the complexities of this case warrant an extension"); H.R. Rep. No. 95-595, at 232 (1978) ("[I]f an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement."), reprinted in 1978 U.S.C.C.A.N. 5963, 6191.

26. The Debtors' cases are among the largest retail bankruptcy cases to date. As set forth above, the Debtors operated hundreds of retail stores

nationwide, employing close to 40,000 employees.

Accordingly, the Debtors' chapter 11 cases involve thousands of parties in interest with billions of dollars of claims at stake. At the latest count, parties had filed roughly 10,270 proofs of claim for claims amounting to over \$6 billion.

27. In addition to the sheer size of these cases and the Debtors' businesses, the Debtors have faced certain complex issues, many of which still remain to be resolved. As noted above, the Debtors closed on the Agency Agreement, providing for the liquidation of substantially all of their inventory, less than one month ago. Since the closing date, the Debtors have worked to analyze their remaining assets for potential recoveries, negotiated with potential purchasers regarding those assets, and begun the process of establishing and obtaining approval of bidding procedures designed to maximize returns on the sale of those assets. The Debtors and their advisors have also begun the time-consuming process of claim reconciliation through, among other things, the establishment of bar

dates. Both of these processes are ongoing as of the date of this Motion.

28. Although the Debtors have accomplished a great deal in a relatively brief span of time, the Debtors and their professionals require additional time to assess the validity and amount of the vast number of claims against the estate, including administrative claims asserted or to be asserted against the Debtors. Moreover, as described below, the Debtors require additional time to reconcile assets and liabilities.

II. THE DEBTORS HAVE MADE SUBSTANTIAL PROGRESS IN THEIR CASES IN A RELATIVELY SHORT AMOUNT OF TIME.

29. Although certain significant issues remain unresolved in these cases, the Debtors have made substantial progress in their cases. Initially, in addition to the Debtors' efforts towards a successful reorganization, the Debtors' management focused on stabilizing the Debtors' businesses and responding to the many time-consuming demands that inevitably accompany the commencement of chapter 11 cases, including responding to myriad inquiries and demands from employees, vendors, taxing authorities, utilities,

landlords, customers, and other parties in interest. Working within the budget imposed by the terms of the Debtors' post-petition financing and the liquidity needs of the Debtors' ongoing businesses, the Debtors' management and professionals worked to ease the concerns of such parties. The Debtors and their professionals have also worked to implement procedures to comply with the substantial reporting and disclosure requirements imposed on debtors in possession.

30. As set forth above, in addition to the significant demands of day-to-day management of the Debtors' cases, the Debtors and their professionals worked diligently to maximize the value of the Debtors' businesses, including by closing a number of unprofitable stores and rejecting certain personal and real property leases and executory contracts, and by actively marketing the Debtors' businesses and negotiating with various parties with respect to potential restructurings or sales. While these efforts did not lead to the going concern sale the Debtors had hoped for, they did culminate in the Agency Agreement,

which the Debtors believe promises the best possible outcome under the circumstances.

31. The Agency Agreement was approved by this Court just over two months after the Petition Date and less than one month prior to the date hereof. In the brief period since the Court's approval of the Agency Agreement and the Liquidation, the Debtors have taken steps to liquidate the Debtors' remaining assets and wind down their businesses. In particular, the Debtors recently sought and obtained approval of procedures to sell or reject the Debtors' remaining leases upon conclusion of the GOB Sales and to sell certain miscellaneous assets of the Debtors and are currently seeking approval of procedures to sell certain of the Debtors' furniture, fixtures and equipment. The Debtors have also obtained approval for sales of their corporate aircraft. Thus, the Debtors' efforts to liquidate their assets in a manner that will maximize recovery for the estates are ongoing. On a parallel path, the Debtors have commenced efforts to evaluate and reconcile claims, including more than \$500 million of claims seeking administrative priority pursuant to section 503(b)(9) of

the Bankruptcy Code, and these efforts are likewise ongoing.

32. The Debtors believe that their employees and their advisors have undertaken substantial efforts to bring these bankruptcy cases to a conclusion as quickly as possible in order to minimize administrative expenses and maximize the recovery available to the Debtors' creditors. There can be no doubt that the Debtors have acted diligently throughout these reorganization cases. The Debtors submit that their demonstrated progress in their chapter 11 cases to date is ample cause to extend the Exclusive Periods.

III. THE EXTENSION SOUGHT WILL NOT HARM ANY PARTY AND INDEED WILL BENEFIT THE DEBTORS' STAKEHOLDERS.

33. This Motion is the Debtors' first request for an extension of their Exclusive Periods. It cannot reasonably be asserted that the Debtors are seeking an extension of the Exclusive Periods to unfairly prejudice or pressure the Debtors' creditors. Instead, the extension requested herein by the Debtors is an exercise of prudent business judgment and an attempt to have adequate time to negotiate terms of a liquidating plan

(or plan(s)) of reorganization that (i) reflects the details of the Liquidation, including any asset sales, and (ii) provides for an equitable distribution of the assets of the Debtors' estates to the holders of valid claims against the Debtors' estates.

34. The request for an extension of the Exclusive Periods set forth herein is reasonable, particularly in light of the complexity of the Debtors' cases, the recently approved Liquidation, and the substantial progress demonstrated by the Debtors in the prosecution of these bankruptcy cases. The requested extension of the Exclusive Periods will not prejudice the legitimate interests of any party in interest in these bankruptcy cases. Rather, the extension will further the Debtors' effort to preserve value.

35. In particular, the Debtors require additional time to evaluate claims against their estates, to assess the extent of the distributable assets of their estates, to liquidate those assets pursuant to a value-maximizing process and to determine the optimal distribution of those assets. Allowing the Debtors

sufficient time to accomplish these tasks is in the best interest of all parties in interest.

36. In sum, the requested extension of the Exclusive Periods will facilitate the Debtors' efforts to maximize the value of their estates by providing the Debtors with a full and fair opportunity to formulate, propose, and seek acceptances of a plan of liquidation. The Debtors submit that the extension requested herein will increase the likelihood of a greater distribution to creditors than would be possible if the Debtors were required to file a plan prior to having such an opportunity.

37. Similar relief to that requested herein has been granted in other large, liquidating chapter 11 cases. See, e.g., In re Sharper Image Corp., Case No. 08-10322 (KG) (Bankr. D. Del. Jul. 16, 2007); In re SN Liquidation, Inc., Case No. 07-11666 (KG) (Bankr. D. Del. Mar. 28, 2008); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. Oct. 9, 2007).

38. Accordingly, for these reasons, the Debtors should be allowed additional time to draft,

negotiate, file, and solicit acceptances of a feasible plan or plans of liquidation in these bankruptcy cases.

NOTICE

39. Notice of this Motion has been provided to those parties entitled to notice under this Court's Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (D.I. 130). The Debtors submit that, under the circumstances, no other or further notice need be given.

WAIVER OF MEMORANDUM OF LAW

40. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtors request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

41. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: February 18, 2009

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